

Message Text

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PAGE 01 STATE 043957

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FM SECSTATE WASHDC

TO AMEMBASSY BERN

UNCLAS STATE 043957

EO 11652: N/ A

TAGS: ABLD; PFOR; AFSP; SZ

SUBJECT: SALE OF CHATEAU DE PRANGINS; US TAX LIABILITY

REF: (A) BERN A-396, SEPT 14, 1972

(B) BERN A-543, DEC 29, 1972

1. REF A REQUESTED DEPARTMENT' S ADVICE CONCERNING PAYMENT OF CANTONAL TAX BILLS PRESENTED BY MFA IN CONNECTION WITH SALE OF CHATEAU. EMBASSY REQUESTED AUTHORIZATION PAY BOTH PROFITS AND REAL ESTATE TAXES FOR YEARS 1965-1969.

2. DEPARTMENT HAS STUDIED DIPLOMATIC NOTE OF SEPTEMBER 8, 1972 RESPONDING EMBASSY' S NOTE OF FEBRUARY 3, 1972. IN LATTER NOTE USG EXPRESSED POSITION THAT IT HAD NO OBLIGATION TO PAY PROFITS TAX SINCE SWISS GOVERNMENT WOULD BE IMMUNE FROM PAYMENT OF SUCH TAX IN THE U. S. DESPITE RECONSIDERATION BY SWISS GOVERNMENT REGARDING THE AMOUNT REPEAT AMOUNT OF THE TAXES DUE, DEPARTMENT CANNOT CONCUR PAYMENT OF PROFITS TAX IN VIEW OF U. S. LAW AND PRACTICE WHICH EXEMPTS FOREIGN GOVERNMENTS FROM PAYMENT OF SUCH TAXES IN U. S. (26 USC 892). DEPARTMENT DOES NOT OBJECT TO PAYMENT REAL ESTATE TAXES IN QUESTION FOR YEARS 1965-70, SINCE PROPERTY WAS NOT ACTUALLY BEING USED FOR DIPLOMATIC, CONSULAR OR OTHER GOVERNMENTAL PURPOSES.

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PAGE 02 STATE 043957

3. DEPARTMENT UNABLE ACCEPT DISTINCTION MADE BY GOS BETWEEN FEDERAL TAXES AND CANTONAL TAXES, AND SUBSEQUENT CONCLUSION THAT NO QUESTION OF RECIPROCITY ARISES. THERE IS NO EVIDENCE THAT ANY FOREIGN GOVERNMENTS IN THE U. S. HAVE BEEN REQUESTED TO PAY ANY TAX IMPOSED BY STATES ON PROFITS OR INCOME IN CONNECTION WITH SALE OF REAL PROPERTY. THEREFORE DEPARTMENT TAKES VIEW THAT RECIPROCITY HAS BEEN EXTENDED RESPECTING ALL TAXES ON INVESTMENTS IN U. S. OF FOREIGN GOVERNMENTS, NOT MERELY FEDERAL TAXES.

4. IF AS EMBASSY HAS CONCLUDED FUTURE APPEALS WOULD BE IN VAIN, EMBASSY IS AUTHORIZED TO MAKE PAYMENT OF FULL AMOUNT OF TAXES (\$16,124) BUT ONLY UNDER PROTEST RESPECTING CANTONAL PROFITS TAX, WITH FULL RESERVATION OF RIGHTS. PAYMENT OF THESE TAXES SHOULD BE ACCOMPANIED BY NOTE SETTING FORTH REASONS FOR PROTEST PAYMENT. IN THIS CONNECTION EMBASSY SHOULD AGAIN CITE U. S. LAW AND PRACTICE AS REFERRED TO PARA 3 ABOVE AND STRESS FACT THAT GOS HAS FAILED TO RESPOND SATISFACTORILY TO THIS POINT RAISED IN EARLIER NOTE. ROGERS

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